



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

TWELVE OAKS MEDICAL CENTER  
c/o HOLLOWAY & GUMBERT  
3701 KIRBY DRIVE, SUITE 1288  
HOUSTON TX 77098-3926

**DWC Claim #:** 06232515

**Injured Employee:** JOSEPH BRIDGES

**Date of Injury:** SEPTEMBER 20, 2004

**Employer Name:** HALLIBURTON ENERGY SERVICES INC

**Insurance Carrier #:** C290C3447983

#### **Respondent Name**

ACE AMERICAN INSURANCE CO

#### **Carrier's Austin Representative Box**

15

#### **MFDR Tracking Number**

M4-06-6581-01

#### **MFDR Date Received**

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary dated November 10, 2006:** "Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%...Therefore, reimbursement for the entire admission including charges for items in (c)(4) is calculated by the stop-loss reimbursement factor stated in the ACIHFG, i.e., 75%. Furthermore, separate reimbursement for items listed under Rule 134.401(c)(4) is improper and illegal when the amount of the claim is \$40,000.00 or greater."

**Requestor's Supplemental Position Summary dated March 6, 2007:** "Since the filing of our client's original request for MDR packet dated November 10, 2006, our client has received a payment. Pursuant to DWC Rule 133.307(g)(3), please find enclosed copy of the EOB reflecting the payment of \$5,772.43 and **amended** DWC-60 Table of Disputed Services that is relevant to the medical care and treatment provided."

**Amount in Dispute per Amended Table of Disputed Services:** \$98,575.75

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary dated March 21, 2007:** "The Carrier will stand on Focus Healthcare/IntraCorp recommendation of 3.27.2006 and the re-evaluation of 05.26.2006, payment denied for the absence of pre-certification/authorization according to Rule 134.600. Carrier's new bill review company, Concentra, erred when recommending a payment of \$5,772.43 for implants for these date of service. Requestor failed to seek pre-authorization for this procedure. Carrier will seek reimbursement from the requestor for this payment."

**Response Submitted by:** ESIS

**Respondent's Supplemental Position Summary dated August 9, 2012:** "On the original EOB, a PPO reduction of was taken. However, it has now been discovered that the reduction was an error. Thus, the Carrier has issued an amended EOB and payment to the provider in the amount of \$303.81. As there is no longer a PPO reduction involved in this matter, there is no relevant contract to be produced."

**Response Submitted by:** Downs Stanford, P.C.

## ***SUMMARY OF FINDINGS***

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
November 21, 2005 through November 26, 2005	Inpatient Hospital Services	\$98,575.75	\$14,361.53

## ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### **Background**

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 Texas Register 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital for the date of admission in dispute.
  - Effective July 13, 2008, the Division's rule at former 28 Texas Administrative Code § 134.401 was repealed. The repeal adoption preamble specified, in pertinent part: "Section 134.401 will continue to apply to reimbursements related to admissions prior to March 1, 2008." 33 Texas Register 5319, 5220 (July 4, 2008).
  - Former 28 Texas Administrative Code § 134.401(a)(1) specified, in pertinent part: "This guidelines shall become effective August 1, 1997. The Acute Care Inpatient Hospital Fee Guideline (ACIHFG) is applicable for all reasonable and medically necessary medical and/or surgical inpatient services rendered after the Effective Date of this rule in an acute care hospital to injured workers under the Texas Workers' Compensation Act." 22 Texas Register 6264, 6306 (July 4, 1997).
3. Former 28 Texas Administrative Code §134.600, effective March 14, 2004, 29 *Texas Register* 2349, requires preauthorization for specific healthcare treatment and services.
4. The services in dispute were reduced / denied by the respondent with the following reason codes:

#### Explanation of Benefits

- 97-Payment is included in the allowance for another service/procedure.
- W10-No maximum allowable defined by fee guideline. Reimbursement made based on insurance carrier fair and reasonable reimbursement.
- 42-Charges exceed our fee schedule or maximum allowable amount.
- 150-Payment adjusted because the payer deems the information submitted does not support this level of service.
- 50-These are non-covered services because this is not deemed a 'medical necessity' by the payer.
- 18-Duplicate claim/service
- 62-Payment denied/reduced for absence of, or exceeded, pre-certification/authorization.
- 62-This procedure/supply must be pre-authorized in accordance with TWCC Rule 134.600. Also supplies assoc w/unauthorized proc/sup are disallowed.
- 45- Charges exceed your contracted/ legislated fee arrangement.
- 900-021-Code description not given/noted on EOB.
- W1-Workers compensation state fee schedule adjustment.
- 080—Code description not given/noted on EOB.
- B13- Previously paid. Payment for this claim/service may have been provided in a previous payment.
- 900-035-Implants was being included with remaining charges & should be allowed separately, used 080 to manual pay.....implant total: \$7975 plus 10% equals \$8772.50.
- Z710-The charge for this procedure exceeds the fee schedule allowance.
- Z652-Recommendation of payment has been based on this procedure code, 320, which best describes services rendered.
- Z652-Recommendation of payment has been based on this procedure code, 350, which best describes services rendered.
- Payment of \$5772.43 was previously issued for this claim. The payment should have been \$6076.24.

- W4-Previous recommendation(s) will stand as they were defined and no additional recommendation is due based on TWCC medical fee guidelines/rules.

## Issues

1. Does the submitted documentation support a preauthorization issue exist in this dispute?
2. Does a medical necessity issue exist in this dispute?
3. Did the audited charges exceed \$40,000.00?
4. Did the admission in dispute involve unusually extensive services?
5. Did the admission in dispute involve unusually costly services?
6. Is the requestor entitled to additional reimbursement?

## Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that “Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection.” 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. According to the explanation of benefits, the respondent initially denied reimbursement for the disputed services based upon reason code “62.”

Former 28 Texas Administrative Code §134.600(h), “The non-emergency health care requiring preauthorization includes: (1) inpatient hospital admissions including the principal scheduled procedure(s) and the length of stay.”

The Division finds that the documentation supports that initially a preauthorization issue existed and services were denied; however, this denial was not maintained and a payment was issued for \$5,772.43. Then, the respondent stated in the position summary dated August 9, 2012, that additional reimbursement of \$303.81 was due. The Division concludes that the respondent did not maintain this denial; therefore, a preauthorization issue does not exist.

2. According to the explanation of benefits, the respondent initially denied reimbursement for \$616.04 charges for unlisted special service, revenue code 270, based upon reason code “50.” Based upon the submitted documentation, the respondent did not maintain this denial and issued payment based upon the per diem methodology. Therefore, a medical necessity issue does not exist and the disputed services will be reviewed per applicable Division rules and guidelines.
3. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states “to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “Audited charges are those charges which remain after a bill review by the insurance carrier has been performed.” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$46,435.39. The division concludes that the total audited charges exceed \$40,000.

4. The requestor in its position statement presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services.” The requestor failed to demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 Texas Administrative Code §134.401(c)(6).
5. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The requestor failed to demonstrate that the particulars of the admission in dispute constitutes unusually costly services; therefore, the division finds that the requestor failed to meet 28 Texas Administrative Code §134.401(c)(6).
6. 28 Texas Administrative Code §134.401(b)(2)(A) titled General Information states, in pertinent part, that “The basic reimbursement for acute care hospital inpatient services rendered shall be the lesser of:
  - (i) a rate for workers’ compensation cases pre-negotiated between the carrier and the hospital;
  - (ii) the hospital’s usual and customary charges; and
  - (iii) reimbursement as set out in section (c) of this section for that admission

In regards to a pre-negotiated rate, the services in dispute were reduced in part with the explanation “Charges exceed your contracted/ legislated fee arrangement” No documentation was provided to support that a reimbursement rate was negotiated between the workers’ compensation insurance carrier Ace American Insurance Co. and Twelve Oaks Medical Center prior to the services being rendered; therefore 28 Texas Administrative Code §134.401(b)(2)(A)(i) does not apply.

In regards to the hospital’s usual and customary charges in this case, review of the medical bill finds that the health care provider’s usual and customary charges equal \$135,383.90.

In regards to reimbursement set out in (c), the division determined that the requestor failed to support that the services in dispute are eligible for the stop-loss method of reimbursement; therefore 28 Texas Administrative Code §134.401(c)(1), titled Standard Per Diem Amount, and §134.401(c)(4), titled Additional Reimbursements, apply. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

- Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission.” The length of stay was five days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of three days results in an allowable amount of \$5,590.00.
- 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).” Review of the requestor’s medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

Description of Implant per Itemized Statement	Quantity	Cost Per Unit	Cost + 10%
Set Screws 6un	6	\$180.00	\$1,188.00
Strip 25X100X4	1	\$1,505.00	\$1,655.50
ZDC 6.5X45 SCW	1	\$1,195.00	\$1,314.50
10mm T-LIF CZ	1	\$3,495.00	\$3,844.50
12mm T-LIF CZ	1	No support for cost	\$0.00

60mm Rod	1	\$350.00	\$385.00
70mm Rod	1	\$350.00	\$385.00
Wax Bone 2.5gm	3	\$40.99	\$135.27
BN Grft BMP Lg	1	\$4,990.00	\$5,489.00
DRL Grft Mtrx	1	No support for cost	\$0.00
Tisseel VH	1	\$410.00	\$451.00
		<b>TOTAL ALLOWABLE</b>	<b>\$14,847.77</b>

- 28 Texas Administrative Code §134.401(c)(4)(B) allows that “When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (ii) Computerized Axial Tomography (CAT scans) (revenue codes 350-352,359).” A review of the submitted hospital bill finds that the requestor billed \$2420.25 for two units of revenue code 350-CT Scan. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement.” Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue code 351 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.
- 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$251.00/unit for Kanamycin 1 GM, and \$329.00/unit for Vancomycin 1GM. The requestor did not submit documentation to support what the cost to the hospital was for these pharmaceuticals. For that reason, additional reimbursement for these items cannot be recommended.

The total reimbursement set out in the applicable portions of (c) results in \$5,590.00.00 + \$14,847.77, for a total of \$20,437.77.

Reimbursement for the services in dispute is therefore determined by the lesser of:

<b>§134.401(b)(2)(A)</b>	<b>Finding</b>
(i)	Not Applicable
(ii)	\$135,383.90
(iii)	\$20,437.77

The division concludes that application of the standard per diem amount and the additional reimbursements under §134.401(c)(4) represents the lesser of the three considerations. The respondent issued payment in the amount of \$6,076.24. Based upon the documentation submitted, additional reimbursement can be recommended.

### **Conclusion**

For the reasons stated above, the division concludes that the services in dispute are not eligible for the stop-loss method of reimbursement, that a pre-negotiated rate does not apply, and that application of 28 Texas Administrative Code §134.401(c)(1), titled *Standard Per Diem Amount*, and §134.401(c)(4), titled *Additional Reimbursements*, results in the total allowable reimbursement. Based upon the documentation submitted, the requestor's Table of Disputed Services, and reimbursement made by the respondent, the amount ordered is \$14,361.53.

## ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$14,361.53 plus applicable accrued interest per 28 Texas Administrative Code §134.803, due within 30 days of receipt of this Order.

### Authorized Signature

_____	_____	11/13/2013
Signature	Medical Fee Dispute Resolution Officer	Date

### **YOUR RIGHT TO APPEAL**

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**